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In re Application of :
KILLINGER, Dennis :
U.S. Application No.: 10/604,182 :
Filing Date: June 30, 2003 : DECISION
Attorney's Docket No.: 1372.08.PRWOUS :
For: OPEN-PATH/FREE-SPACE OPTICAL :
COMMUNICATION SYSTEM AND METHOD :
USING REFLECTED OR BACKSCATTERED :
LIGHT :

This decision is in response to applicant's "Petition to Add Unintentionally Delayed Domestic Priority Claim (37 CFR 1.178(a)(3))" dated April 23, 2010, which is being treated as a request to accept of an unintentionally delayed claim for priority under 35 U.S.C. 365(c) and 37 CFR 1.78(a)(3) to international application PCT/US2002/02866. Because the international application claims priority to a prior filed provisional application, the petition is being treated as a petition under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application.

The petitions are **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) in that (1) a proper reference to the prior-filed applications has been included in an amendment to the first sentence of the specification, as provided by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) applicant's statement that "the entire delay between the date the claim for domestic priority was due was due under 37 CFR 1.78(a)(2)(ii) and the date of this petition was filed was unintentional" is construed as meaning that "the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional." If this is incorrect, petitioner must immediately notify the Office of PCT Legal Administration. As construed, petitioner's statement satisfied item (3) above. Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 119(e) to the prior-filed applications satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 1.78(a)(1) and (a)(2) and under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that any Filing Receipt includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

Any questions concerning this matter may be directed to Anthony Smith at (571) 272-3298. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 2613 for appropriate action on the amendment submitted April 23, 2010, including consideration by the examiner of the claim for benefit of the prior-filed applications.


Bryan Lin
Legal Examiner
Office of PCT Legal Administration